

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Payam Ghaderi,
Plaintiff,
v.
Roxi Hariri,
Defendant.

No. C 04-02925 JW

**PRELIMINARY PRETRIAL CONFERENCE
SCHEDULING ORDER - (JURY TRIAL);
ORDER EXTENDING DEADLINE FOR
PLAINTIFF TO COMPLETE DEPOSITIONS
AND OR WRITTEN INTERROGATORIES**

On June 23, 2008, the Court conducted a Preliminary Pretrial Conference. Plaintiff appeared in *pro per*; Defendant was represented by County counsel. The Court orders the parties to comply with the following:

- (1) At the conference, Plaintiff once again requested to depose Defendant Hariri and non-party witness Mendoza, but he made inconsistent statements regarding whether he would indeed conduct the depositions the Court had previously permitted him to do. In the Court's March 18, 2008 Order, the Court granted Plaintiff until May 19, 2008 to complete these depositions. (See Docket Item No. 139.) To date, Plaintiff has failed to do so and has stated that he does not want to do them. Instead of depositions, Plaintiff now wants to propound written interrogatories to both Defendant Hariri and non-party witness Mendoza.

Although Plaintiff has once again missed deadlines imposed by the Court, in light of his *pro se* status and a finding that there is little prejudice to Defendant, the Court GRANTS Plaintiff one last continuance to gather the necessary evidence he

1 requires to prosecute his case. However, to avoid further prejudice to Defendant,
 2 Plaintiff shall conduct the deposition or written interrogatories of Defendant Hariri
 3 and non-party witness Mendoza on or before **July 24, 2008**. This is Plaintiff's *final*
 4 continuance.

5 The Court refers the parties to the assigned Magistrate Judge, Judge Trumbull,
 6 to resolve any dispute regarding these additional depositions or written
 7 interrogatories.

8 (2) **TRIAL SCHEDULE:**

Hearing on Defendant's Anticipated Motion for Summary Judgment <i>(Defendant shall notice and serve the motion in accordance with the Civil Local Rules of Court)</i>	September 22, 2008 at 9 a.m.
Final Pretrial Conference (¶ 4)	November 17, 2008 at 3 p.m.
Joint Pretrial Conference Statement, <i>In Limine</i> Motions, and Proposed Jury Instructions Due (30 days before Final Pretrial Conference)	October 17, 2008
Jury Selection	December 2, 2008 at 9 a.m.
Jury Trial Date and Sessions¹ Sessions 1-3	December 3 - 5, 2008

17 **Meet and Confer Requirement**

18 1. No later than 30 days prior to the Final Pretrial Conference, the parties shall meet and
 19 confer with respect to the Joint Pretrial Conference Statement, submission of a joint list of witnesses,
 20 a joint list of trial exhibits and a joint list of discovery material which each party intends to offer in
 21 evidence as a part of its case-in-chief. Unless objections are made in accord with this Order, all
 22 witnesses, exhibits and discovery material contained on the joint submission shall be deemed
 23 admissible into evidence by stipulation.

25 ¹ Jury trials are held in afternoon sessions from 1:00pm to 4:00pm, Tuesdays through
 26 Fridays unless the Court otherwise specifies. At the Final Pretrial Conference, the Court reserves
 27 the right to fold the last few afternoon sessions into morning sessions (9:00am - 12:00pm) thus
 creating full days for trial. The final trial schedule will be confirmed at the Final Pretrial
 Conference.

1 **Objections and Lodging Disputed Material with the Court**

2 2. If a party objects to receipt into evidence of a witness, exhibits or discovery response,
3 the party shall advise all opposing parties during the conference described in Paragraph 1, and
4 attempt to resolve the dispute. If the parties are unsuccessful in resolving the dispute, any party
5 wishing to object to receipt of the testimony of any witness, any exhibit or discovery response into
6 evidence shall lodge with Chambers a copy of the disputed material at the commencement of trial.
7 Attached to the submission shall be a brief statement of the objection and any response by the
8 proffering party. The Court will indicate on the submitted copy whether the objection is overruled
9 or sustained and return the material to counsel.

10 **Lodging Joint Pretrial Conference Statement, In Limine Motions**

11 **and Proposed Jury Instructions**

12 3. Pursuant to the date set forth in the Case Schedule, the parties shall file and lodge
13 with Chambers the following:

- 14 a. **Joint Pretrial Conference Statement:** The parties shall file a joint pretrial
15 statement which shall contain the following information: (1) a brief
16 description of the substance of claims and defenses which remain to be
17 decided; (2) a detailed statement of all the relief claimed, particularly
18 itemizing all elements of damages claimed as well as witnesses, documents or
19 other evidentiary material to be presented concerning the amount of those
20 damages; (3) a plain and concise statement of all relevant facts not reasonably
21 disputable, as well as which facts the parties will stipulate for incorporation
22 into the trial record without the necessity of supporting testimony or exhibits;
23 (4) a plain and concise statement of all disputed factual issues which remain
24 to be decided; (5) a statement assessing whether all or part of the action may
25 be presented upon an agreed statement of facts; (6) a statement of stipulations
26 requested or proposed for pretrial or trial purposes; (7) without extended legal
27 argument, a concise statement of each disputed point of law concerning

1 liability or relief, citing supporting statutes and decisions; (8) a list of all
2 witnesses likely to be called at trial; (9) a list of evidence the parties intend to
3 present at trial through use of excerpts from depositions, from interrogatory
4 answers, or from responses to requests for admission; and (10) any other
5 subjects relevant to the trial of the action, or material to its just, speedy and
6 inexpensive determination. **Counsel are directed to meet and confer in**
7 **advance of the date for submission of pretrial material with respect to the**
8 **pretrial conference statement.**

- 9 b. ***In Limine Motions:*** Any *In limine* motions shall be filed in writing and
10 submitted along with the Joint Final Pretrial Conference Statement. Any
11 opposition shall be filed in writing and served no later than fifteen (15) days
12 before the Final Pretrial Conference. **Five (5)** days before the date of the
13 Final Pretrial Conference, the parties shall organize their **in limine** motions as
14 follows:
- 15 (1) Each side shall be responsible for producing a combined folder with
16 all of *their* in limine motions, oppositions to their motions (if any), and
17 replies (if any), respectively. The motion papers shall be clearly
18 marked and separated in one single binder. The binder shall contain a
19 table of contents, listing each motion with a short sentence regarding
the grounds for in limine and a short sentence regarding the
opposition; all statements must be supported by proper citations to the
motions. **The table of contents shall also be saved on a 3½ floppy**
disk in MS Word or WordPerfect format to be attached inside the
binder.
- 20 (2) Please note that this binder is not a substitute for filing the motions
21 and related papers via ECF; it is designed for the Court to evaluate the
motions.
22 Two copies of the binder shall be delivered to the Court (by way of the
Clerk's Office) no later than **five (5) days before the date of the**
Final Pretrial Conference by 4 PM. The parties must also bring the
23 binder to the Final Pretrial Conference for their own references.
24 These motions will be deemed submitted without oral argument,
unless the Court orders otherwise.

25 //

1 c. Proposed Jury Instructions: The parties shall file their Proposed Jury
2 Instructions thirty (30) days before the date of the Final Pretrial Conference.
3 **The parties shall bring to the Final Pretrial Conference their Proposed**
4 **Jury Instructions on a 3½ floppy disk in MS Word or WordPerfect**
5 **format.**

6 **Final Pretrial Conference**

7 4. The Court will conduct a Final Pretrial Conference on the date set forth in the Case
8 Schedule. The trial attorneys must attend the conference. At the final pretrial conference, the Court
9 will consider issues raised in the Final Pretrial Conference Statement, motions *in limine* and discuss
10 the procedures for trial of the case.

11 **Lodging Witness Lists and Exhibit Lists**

12 5. At the Final Pretrial Conference, the parties shall lodge with Chambers the joint list
13 of witnesses, and a joint list of exhibits. Unless otherwise ordered, all exhibits shall be in a format
14 compatible with either the video or digital evidence presentation system utilized by the Court. The
15 proffering party shall retain custody of all exhibits, schedules, summaries, diagrams or charts to be
16 used at the trial.

17 6. To accommodate consideration of electronic exhibits, as the trial progresses, the
18 parties will load images of the admitted exhibits onto a stand alone hard drive or CD or DVD in
19 “pdf” format. The parties shall ensure that, apart from whatever technical material is necessary to
20 operate the system, the CD, DVD or hard drive contains only the items specified in this order and
21 nothing else. The images will be placed in a folder labeled “Admitted Exhibits” that shall contain
22 all trial exhibits received into evidence. In addition to the exhibits, themselves, the folder shall
23 contain a file labeled “List of Admitted Exhibits by Exhibit Number.” The “List” shall list in
24 numerical order by Trial Exhibit Number, each admitted exhibit, along with the date of the
25 document (where available), and a brief description of the exhibit. To the extent practicable, the
26 “List” shall be text searchable and hyperlinked to the Exhibits, themselves. The folder shall contain
27 a second file labeled “List of Admitted Exhibits by Date.” This second “List” shall contain the

1 same information, except that the exhibits will be listed in chronological order, according to the date
2 the document was prepared. The external stand alone hard drive or CD or DVD and a printed copy
3 of the exhibit lists will be marked as exhibits and placed in evidence as demonstrative exhibits.

4 7. Before the case is submitted for decision, each party will be deemed to have had an
5 opportunity to review the material described in the previous paragraph to ensure their accuracy.
6 Unless a party objects before the case is submitted for decision to the judge or jury, the party will be
7 deemed to have waived any and all objections to the submitted materials.

8 8. To accommodate review of electronic exhibits, the parties will jointly provide the
9 jury with the following equipment: a laptop computer, the external stand alone hard drive, CD or
10 DVD, a printer (and, if practicable, an LCD projector).

11 9. During its closing instructions, the Court will advise the jury of the form in which
12 exhibits will be submitted to them. The jury will also be instructed that, unless impracticable, upon
13 a juror's written request, a printed copy of any exhibit received in evidence will be provided to the
14 jury. Before the jury retires to deliberate, the parties will provide a tutorial to the jurors on how to
15 operate the equipment, how to view the exhibits, and how to print the exhibits if the jury wishes to
16 do so. A written set of instructions on operations of the equipment will be sent into the jury room.

17 10. When the jury is deliberating, at least one lawyer for each side shall remain in close
18 proximity to the courtroom. In the event of any technical problem, or if the jurors have questions
19 about how to operate the equipment, the jurors shall pass a note to the clerk, just as with any other
20 questions they may have. The Court will read the note to the lawyers. Those lawyers shall consult
21 with each other and with their respective technicians, and propose to the Court how they wish to
22 address the technical problem.

23 11. The parties shall maintain a backup laptop computer and a backup hard drive with
24 identical images and data at the courthouse such that, in the event of a technical problem that cannot
25 be quickly and easily remedied, the equipment can be replaced.

1 12. Unless the Court orders otherwise for good cause shown, the expense of the
2 equipment and the costs of preparation of the Lists and Exhibits will be shared equally among the
3 parties.

4 13. This Standing Order also applies to cases tried to the Court sitting without a jury,
5 except that paragraphs 8-11 do not apply.

6 14. The parties are ordered to meet and confer in advance of trial to establish a procedure
7 for complying with this Order with respect to electronic exhibits.

8 15. Upon request, in non-complex cases the Court will excuse the parties from using
9 electronic formatted documents. In that event on the first day of trial, the parties shall submit
10 exhibits as follows:

- a. A copy for the trial judge;
 - b. A copy for the witness stand. Although the Court's copy of exhibits shall be in a single binder, the Court prefers the parties to prepare a binder for each witness, which contains only those documents pertinent to that witness.
 - c. No duplicates of a document shall be submitted, unless the duplicate copy has independent evidentiary value to prove some disputed issue of material fact (e.g., date stamp to prove receipt on a particular date, where date of receipt is a disputed issue of a material fact).

Jury Trial Schedule

16. The time allowed for trial shall be divided equally between the plaintiff's side and the defendant's side. Co-parties are ordered to meet, confer and agree to an allocation among themselves. A party may spend its allocated time presenting its own case or on cross-examination of witnesses called by other parties or for presentation of a counterclaim. When a party's allocated time period has expired, unless otherwise ordered for good cause shown, no further time will be allowed to that party if it would interfere with the ability of the opposing party to present its case.

Trial Procedure

17. In opening statements, counsel shall not express personal knowledge or opinion
concerning any matter in issue.

18. Counsel must question witnesses from the podium, using the microphone. Without
requesting permission, counsel may approach witnesses for any proper purposes.

19. Address all remarks to the Court, not to opposing counsel.

20. Refer to all persons, including witnesses, other counsel and the parties by their
surnames and not by their first or given names.

21. In examining a witness, counsel shall not repeat or echo the answer given by the
witness.

22. Counsel must stand when making an objection.

23. Conferences at the bench or sidebar are not favored by the Court. Any sidebar
conferences which are allowed will be off the record. If any counsel wishes to place matters on the
record, he or she may so request, and the Court will make a responsive order.

24. Counsel have full responsibility to arrange for the appearance of witnesses during the
presentation of their case so as to eliminate delay caused by waiting for witnesses who have been
placed on call by counsel.

25. Unless an agreement to the contrary is entered into by opposing counsel, all nonparty
or nonexpert witnesses will be excluded from the courtroom when not testifying. When a witness
has completed his or her testimony, the witness is excused unless counsel indicates that he or she
wishes the witness to remain subject to being recalled. Any witness who has been excused from
further testimony may remain as a spectator. It will be the responsibility of counsel to make an
announcement at the time the witness steps down that he or she should remain in the environs of the
Court for a reasonable time to permit such counsel an opportunity to secure and serve a subpoena
upon the witness and assume responsibility for his or her per diem and other expenses as provided
by governing rule or statute.

1 26. Counsel shall admonish all persons at counsel table that gestures, facial expressions,
2 audible comments, or the like, as manifestations of approval or disapproval during the testimony of
3 witnesses, or at any other time, are prohibited.

4 27. Witness examination shall consist of direct examination, cross-examination and re-
5 direct examination. No recross-examination will be allowed without prior approval of the Court
6 specifically indicating the area for recross-examination. When there are multiple defense counsel,
7 they are directed to confer and designate to the Court the sequence in which they wish to be
8 recognized during trial for purposes of presenting opening statements and conducting cross-
9 examination of witnesses. If one counsel conducts the direct examination of a witness, that same
10 counsel must make objections when the witness is cross-examined. Counsel who will conduct the
11 cross-examination should object while the witness is on direct.

12 28. After the commencement of trial testimony, upon request of co-parties, any objection,
13 motion or other application for relief made by any co-party, orally or in writing, shall be deemed to
14 be adopted and joined in by every other co-party, without announcement by counsel to that effect,
15 and the rulings of the Court shall be deemed applicable to each party unless otherwise stated at the
16 time the ruling is made. Accordingly, it shall be regarded as unnecessary and improper for counsel
17 to rise to "join in" an objection or motion. Rather, counsel should rise to be heard only for the
18 purpose of expressly opting out of an objection or motion if that is his or her position.

19 29. Counsel are directed to deliver to opposing counsel at the end of each trial day (if not
20 earlier) a list of witnesses counsel anticipates calling the next trial day.

21 30. Counsel calling a non-client witness to testify should have no further discussions with
22 that witness concerning the case or any aspect of his or her testimony after the witness has been
23 tendered for cross-examination and until such time as the witness has been tendered back for redirect
24 examination. At all other times, within the bounds of governing ethics and the law, counsel may
25 engage in discussions with witnesses during trial.

26 31. Any time taken away from presentation of evidence to the trier of fact due to, for
27 example, lengthy legal motions made during the time allocated to the presentation of evidence, or
28 delays in the commencement of proceedings due to circumstances within the control of counsel, will

1 be deducted from the time allocated for the presentation of evidence. Upon timely application based
2 upon good cause, the Court may relieve a party of its stipulation to the agreed schedule.

3 32. It is the practice of the Court periodically to inform counsel of the Court's record of
4 how much time each side has remaining for the presentation of evidence based upon the stipulated
5 trial schedule.

Daily Trial Transcript

7 33. Any counsel desiring daily or expedited transcripts during trial should make
8 immediate arrangements with the court reporter and should inform the Court and other counsel of
9 such intentions.

Dated: June 24, 2008

James Ware
JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 John Lewis Winchester john.winchester@cco.sccgov.org
Michael L. Rossi michael.rossi@cco.co.scl.ca.us
3 Paul T. Hamerness paul.hamerness@doj.ca.gov

4 Payam Ghaderi
Post Office Box 9045
5 San Jose, CA 95157

6

7 **Dated: June 24, 2008**

Richard W. Wieking, Clerk

8

9 By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy